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## THE CONSTITUTIONAL RIGHT TO EDUCATION AS A MECHANISM FOR GUARANTEEING THE PERSONAL FREEDOM OF A PERSON AND A CITIZEN

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### **Бисага Ю.М. Конституційне право на освіту як механізм гарантування особистої свободи людини та громадянина.**

У статті проаналізовано та виокремлено наукову проблему, що стосується конституційного права на освіту та гарантій його захисту у контексті євроінтеграційних процесів. Виходячи з стандартів національного та міжнародного законодавства, було досліджено місце права на освіту в системі прав людини та його взаємозв'язок з каталогом конституційних прав та свобод. Запропоновано власне визначення конституційного права на освіту.

Окрема увага у статті була присвячена питанням входження освіти в європейський простір. З метою ефективної реалізації права на освіту, зокрема в контексті глобалізаційних та євроінтеграційних процесів, проводиться реформування та модернізація системи освіти, включаючи правову сферу, та її адаптація до європейських стандартів.

Особливу важливість для процесу євроінтеграції в освіті має Угода про асоціацію між Україною та Європейським Союзом. Було з'ясовано, що Міністерство освіти і науки приділяє значну увагу реформам у сфері освіти та науки, в тому числі, в умовах війни.

Проаналізовано конституційні гарантії, що складають зміст конституційного права на освіту та його захист. Зокрема, увагу присвячено особливій гарантії – захисту конституційного права на освіту. Таким чином, за результатами дослідження вітчизняної судової практики та професійної діяльності Європейського суду з прав людини було з'ясовано сутність та зміст гарантій захисту права на освіту.

Проведено дослідження суб'єктивного складу захисту освітніх прав в особі студентів вищих навчальних закладів та основних інструментів захисту, які вони використовують. Виявлено, що студенти найчастіше користуються способами самозахисту та судовим захистом.

Аналізуючи поточну судову практику, встановлено, що найчастішими причинами звернень

являються такі: відмова у визнанні документа про вищу освіту (включаючи процедуру визнання іноземного освітнього документу українськими органами); порушення прав на вищу освіту з боку нормативно-правових актів виконавчої влади, органів місцевого самоврядування та інших владних органів; оскарження рішень апеляційної комісії Українського центру оцінювання якості освіти, що стосуються відмови в реєстрації або порушень під час проведення та результатів зовнішнього незалежного оцінювання; доступність зовнішнього незалежного оцінювання та достатнього просвітництва студентів щодо цього процесу.

**Ключові слова:** освіта; конституційне право на освіту; конституційно-правове регулювання права на освіту; міжнародні та європейські стандарти права на освіту; освіта в Україні; навчальні заклади; конституційні права людини та громадянина.

### **Bysaha Yu. The constitutional right to education as a mechanism for guaranteeing the personal freedom of a person and a citizen.**

The article analyzes and singles out a scientific problem related to the constitutional right to education and guarantees of its protection in the context of European integration processes. Based on the standards of national and international legislation, the place of the right to education in the system of human rights and its relationship with the catalog of constitutional rights and freedoms was investigated. A proper definition of the constitutional right to education is proposed.

Particular attention in the article was devoted to the issue of the entry of education into the European space. In order to effectively implement the right to education, particularly in the context of globalization and European integration processes, the education system is being reformed and modernized, including the legal sphere, and its adaptation to European standards.

The Association Agreement between Ukraine and the European Union is of particular importance for

the process of European integration in education. It was found out that the Ministry of Education and Science pays considerable attention to reforms in the field of education and science, including in wartime conditions.

The constitutional guarantees that make up the content of the constitutional right to education and its protection are analyzed. In particular, attention is devoted to a special guarantee - the protection of the constitutional right to education. Thus, based on the results of the research of the domestic judicial practice and the professional activity of the European Court of Human Rights, the essence and content of the guarantees of protection of the right to education were clarified.

Analyzing the current judicial practice, it was established that the most frequent reasons for appeals are the following: refusal to recognize a document on higher education (including the procedure for recognizing a foreign educational document by Ukrainian authorities); violation of the rights to higher education by normative legal acts of the executive power, local self-government bodies and other authorities; appeal against the decisions of the appeal commission of the Ukrainian Center for the Evaluation of the Quality of Education, regarding the refusal of registration or violations during the conduct and results of the external independent evaluation; availability of external independent assessment and sufficient education of students regarding this process.

**Key words:** education; constitutional right to education; constitutional and legal regulation of the right to education; international and European standards of the right to education; Education in Ukraine; schools; constitutional rights of man and citizen.

**Formulation of the problem.** Education in the modern environment is characterized as a necessary component of the functioning of every society and an important prerequisite for its development. Education not only indicates the general culture, but is also one of the elements of modernization and improvement of the functioning of the state and its authorities. Education is a guarantee of the internal development of the personality, increasing its intellectual potential and is a means of self-realization. All of the above makes the issue of ensuring and protecting the right to education in Ukraine and the world a priority.

Ukraine, as a democratic country, recognizes new guidelines and fundamental values related to human rights, which are observed by the international community. Consolidating and guaranteeing the right to education occupies a special place among them. New trends in the development of countries that attach importance to education emphasize the need to study the right to education both at the international and national levels.

### **Analysis of recent research and publications.**

The constitutional right to education in the aspect of personal freedom of a person is quite an important field today. A significant array of developments in this field makes a great contribution to the further legalization of this issue, as well as the development of guarantees and proposals for the approval, provision and protection of the human and citizen's right to education. At the same time, the works of such scientists as: B. Andrusyshin, V. Babkin, O. Batanov, S. Bobrovnyk, M. Kozyubra, A. Kolodiy, R. Kovalchuk, A. Krusyan, O. Kulinich, A. Oliynyk, N. Onishchenko, N. Parkhomenko, N. Petretska, V. Pohorilko, P. Rabinovych, O. Skakun, O. Skrypniuk, S. Stetsenko, O. Melnychuk, V. Fedorenko, M. Havronyuk, V. Shapoval, R. Shapoval, Yu. Shemshuchenko, O. Yushchik and others.

**The purpose of writing** the article is to analyze the issues of the constitutional right to education in the aspect of guaranteeing the rights and freedoms of a person and a citizen based on Art. 53 of the Constitution of Ukraine.

**Outline of the main provisions.** Education (including higher education) plays an important role in the system of constitutional rights and freedoms of a person and a citizen. It is known that education is the basis of personality development from an intellectual, spiritual, physical and cultural perspective. It contributes to successful socialization, economic well-being, development of society and formation of common values and culture.

Programming and regulation of higher education issues reflect the importance of this phenomenon and its functional properties for the development of the individual, society and the state in the modern globalized civilization.

The right to education, in particular higher education, is enshrined in international human rights standards and national legal documents. Current Constitution of Ukraine in Article 53 [1]. guarantees everyone's right to education. International acts, such as the Universal Declaration of Human Rights [2], Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms [3], the International Covenant on Economic, Social and Cultural Rights [4], the Charter of the European Union on Fundamental Rights [5], and the Bologna Convention [6], also recognize the right to education, including higher education.

The degree of higher education, its openness and accessibility for all individuals are taken into account in accordance with the articles of the International Covenant on Economic, Social and Cultural Rights [4].

The terminological definition of the "right to higher education" used by legal science is analyzed.

A legal term expresses a concept from the legal sphere of social life and is defined in legal literature, normative legal acts, legal dictionaries, handbooks, encyclopedias and scientific works.

Therefore, the definition of "legal term" correlates with the legal concept as the first element of legal knowledge and is a symbolic model presented in sound and literary forms. A legal concept, its internal content, volume and structure is a logical and semantic basis for determining the terminological meaning in the form of a definition that summarizes the most important features and connections of a legal phenomenon [7].

As O. Hrezyna rightly points out, the Constitution of Ukraine of June 28, 1996 is the main and priority legislative act that establishes and guarantees the inviolability of the right to education in Ukraine. According to Article 53 of the Constitution of Ukraine, the right to education is guaranteed for every citizen. The state ensures the availability and free of charge of pre-school, full general secondary, vocational-technical and higher education in state and communal educational institutions, and also promotes the development of various forms of education, including pre-school, full general secondary, out-of-school, vocational-technical, higher and post-graduate education. The state also provides scholarships and benefits for pupils and students [8].

Taking this into account, it can be concluded that the constitutional right to education should be understood as the guarantees provided for and enshrined in the Basic Law, as well as detailed by the relevant normative legal acts in the field of creating fair and accessible conditions in order for citizens to exercise their constitutional right to development and education

On the basis of the above, it is possible to single out the following constitutional guarantees of national legislation, which the state provides in the field of education:

1) direct provision of the constitutional right of everyone to education (clause 1, article 53 of the Constitution of Ukraine);

2) consolidation of guarantees regarding the level of education, in particular the right to receive publicly accessible and free preschool, basic general and secondary professional education in state or communal educational institutions and enterprises (paragraph 3, article 53 of the Constitution of Ukraine);

3) guarantee of the right to obtain higher education in state or communal educational institutions and enterprises on a competitive basis (clause 4, article 53 of the Constitution of Ukraine);

4) the obligation to receive general education for children and the corresponding duties of their parents or persons who replace them (strengthening the guarantee of the right to

receive general education) (clause 2, article 53 of the Constitution of Ukraine);

5) consolidation of guarantees of permission and provision of various forms of implementation of the constitutional right to education, which includes guarantees of opportunities to receive education in various forms (according to Article 53 of the Constitution of Ukraine), as well as guarantees of opportunities to receive education in the form of self-education (informal education) (according to with Article 8 of the Law of Ukraine "On Education"). In addition, it is recognized that a person, his rights and freedoms are the highest value, and the state is obliged to recognize, observe and protect the rights and freedoms of a person and a citizen (according to Article 3 of the Constitution of Ukraine);

6) general issues of upbringing, education, culture and health care are determined exclusively by the laws of Ukraine (in accordance with Clause 6, Part 1 of Article 92 of the Constitution of Ukraine);

7) guarantees of fundamental constitutional rights, which include the constitutional right to education, include: the right to life, associated with the right to respect for dignity (according to Part 1 of Article 27 and Part 1 of Article 28 of the Constitution of Ukraine), the right to free human development (according to part 3 of Article 10 of the Constitution of Ukraine), freedom of creativity (according to parts 1 and 2 of Article 54 of the Constitution of Ukraine), rights in the field of culture (according to Article 54 of the Constitution of Ukraine) and the right to information (according to Article 32 of the Constitution of Ukraine). The constitutional right to education acts as a mechanism that provides opportunities for the full implementation of the specified legal opportunities.

It should be noted that Ukraine, as a candidate for EU membership, pays considerable attention to the integration of higher education into the European space. Therefore, it is urgent to adapt the national legislation to the European one in order to fully implement the mechanism of constitutional and legal regulation of the right to education [7].

The Association Agreement between Ukraine and the European Union, which sets the course for intensifying cooperation in the field of higher education, is the most important in educational European integration issues. This act is aimed at reforming and modernizing the system of higher education, increasing its quality and importance, as well as at the convergence of higher education systems within the framework of the Bologna process. The norms of the Bologna Process are also included in the Law of Ukraine «On Higher Education» [9] in order to ensure the quality training of competitive human capital for high-tech and innovative development of the country.

The strategy for the development of higher education for 2021–2031, developed by the Ministry of Education

and Science of Ukraine, is also aimed at solving problems by organizationally ensuring the conditions of integration into the European and world scientific and educational space, ensuring the internationalization of the scientific and educational process and the active involvement of foreign students in studying in Ukraine, which is an extremely important task [7, 10].

The right to education, which is recognized and enshrined in constitutional and industry norms, aims to create conditions for citizens to fulfill their constitutional duties, support social solidarity and preserve cultural heritage. According to the Constitution of Ukraine, the state is obliged to provide the necessary and sufficient opportunities for a full-fledged and anti-discriminatory policy of realizing the right to education. The state in this case acts as a guarantor and defender of this right, but is not limited to the minimum level of guarantees, providing additional guarantees in an expanded and detailed form [11].

At the same time, there is an extensive system of guarantees that are recognized and enshrined in the Constitution of Ukraine, including guarantees of recognition of the right to education for everyone, establishment of guarantees regarding the level of education, permission and various forms of realization of this right, legislative regulation of general issues of upbringing, education, culture, health care, as well as guarantees of fundamental constitutional rights, including the right to education.

**Conclusions.** Thus, within the framework of this scientific article, the constitutional right to education was considered in the context of its importance as a guarantee of personal freedom and development in Ukraine. In particular, the constitutional and legal aspects of this right, its importance for the self-realization of the individual and the support of a democratic society were analyzed, in particular:

- the constitutional right to education is an important element of guaranteeing the personal freedom of every citizen of Ukraine. The latter provides an opportunity to choose education according to one's own interests and needs.

- the right to education is a key factor in the development of the individual, improving his qualifications and participation in public life. Contributes to the formation of civic consciousness and an active civic position.

- the current Constitution of Ukraine and legislation guarantee equal rights to education for all citizens, regardless of their origin, status or religious beliefs.

- ensuring accessibility and quality education remains an important task for Ukrainian society and the state. Ensuring access to education for all segments of the population, including persons with special needs (development of inclusive education) remains a priority direction.

- the development of education in Ukraine is an integral part of building a democratic society

and ensuring human rights to education. Education should be focused on the needs of society and contribute to its development.

Therefore, the constitutional right to education in Ukraine is recognized as an important factor in guaranteeing the personal freedom and development of every citizen. Ensuring the availability and quality of education remains an urgent task for Ukrainian society and authorities, contributing to the improvement of the quality of life and development of society as a whole.

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